



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 11**

**[Docket No. FWS–HQ–LE–2020–0139; FF09L00200–FX–LE12200900000]**

**RIN 1018–BF11**

### **Civil Penalties; 2021 Inflation Adjustments for Civil Monetary Penalties**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is issuing this final rule, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) and Office of Management and Budget (OMB) guidance, to adjust for inflation the statutory civil monetary penalties that may be assessed for violations of Service-administered statutes and their implementing regulations. We are required to adjust civil monetary penalties annually for inflation according to a formula specified in the Inflation Adjustment Act. This rule replaces the previously issued amounts with the updated amounts after using the 2021 inflation adjustment multiplier provided in the OMB guidance.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** This rule may be found on the internet at <http://www.regulations.gov> in Docket No. FWS-HQ-LE-2020-0139.

**FOR FURTHER INFORMATION CONTACT:** Victoria Owens, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358-1949.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The regulations in title 50 of the Code of Federal Regulations at 50 CFR part 11 provide uniform rules and procedures for the assessment of civil penalties resulting from violations of certain laws and regulations enforced by the Service.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114-74) (Inflation Adjustment Act) required Federal agencies to adjust the level of civil monetary penalties with an initial “catch up” adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties (civil penalties) that can be imposed under the laws administered by that agency. The Inflation Adjustment Act

provided that the initial “catch up adjustment” take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This final rule adjusts the civil penalty amounts that may be imposed pursuant to each statutory provision beginning on the date specified above in **DATES**.

On June 28, 2016, the Service published in the *Federal Register* an interim rule that revised 50 CFR part 11 (81 FR 41862) to carry out the Inflation Adjustment Act. The Service subsequently published a final rule to that interim rule on December 23, 2016 (81 FR 94274). The Service published final rules in 2017, 2018, and 2019, further adjusting the civil penalty amounts in 50 CFR 11.33 per OMB guidance (82 FR 6307, January 19, 2017; 83 FR 5950, February 12, 2018; and 84 FR 15525, April 16, 2019). Most recently, we published a final rule on February 24, 2020, updating the civil penalty amounts with the 2020 inflation multiplier (85 FR 10310). This final rule adjusts the civil monetary penalty amounts that were listed in the 2020 final rule and subsequently codified at 50 CFR 11.33 by using the 2021 inflation multiplier provided to all Federal agencies by OMB (see below).

OMB issued a memorandum, M–21–10, entitled “Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,” which provides the cost-of-living adjustment multiplier for 2021: 1.01182. Therefore, we multiplied each penalty in the table in 50 CFR 11.33 by 1.01182 to obtain the 2021 annual adjustment. The new amounts are reflected in the table in the rule portion of this document and replace the current amounts in 50 CFR 11.33.

### **Required Determinations**

In this final rule, we affirm the required determinations we made in the June 28, 2016, interim rule (81 FR 41862); for descriptions of our actions to ensure compliance with the following statutes and Executive orders, see that rule:

- National Environmental Policy Act (42 U.S.C. 4321 et seq.);

- Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.);
- Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.);
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

### **Administrative Procedure Act**

As stated above, under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, Pub. L. 114-74, 129 Stat. 584 (2015), each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provided for an initial “catch up adjustment” to take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This final rule adjusts the civil penalty amounts that may be imposed pursuant to each statutory provision beginning on the effective date of this rule. To comply with the Inflation Adjustment Act, we are issuing these regulations as a final rule.

Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for prior public comment. The Service finds that providing for public comment before issuing this rule is unnecessary as this rulemaking is a nondiscretionary action. The Service is required to publish this rule in order to update the civil penalty amounts by the specified formula described above. The Service has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Since this update to the February 24, 2020, final rule (85 FR 10310) is merely ministerial, we find that pre-publication notice and public comment with respect to the revisions set forth in this rule is unnecessary. We

also believe that we have good cause under 5 U.S.C. 553(d) to make this rule effective upon publication to meet the statutory deadline imposed by the Inflation Adjustment Act.

### **List of Subjects in 50 CFR Part 11**

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Plants, Transportation, Wildlife.

### **Regulation Promulgation**

For the reasons described above, we amend part 11, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

### **PART 11—CIVIL PROCEDURES**

1. The authority citation for part 11 continues to read as follows:

Authority: 16 U.S.C. 470aa–470mm, 470aaa–470aaa-11, 668–668d, 1361–1384, 1401–1407, 1531–1544, 3371–3378, 4201–4245, 4901–4916, 5201–5207, 5301–5306; 18 U.S.C. 42–43; 25 U.S.C. 3001–3013; and Sec. 107, Pub. L. 114-74, 129 Stat. 599, unless otherwise noted.

2. Revise the table in § 11.33 to read as follows:

#### **§ 11.33 Adjustments to penalties.**

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<b>Law</b>	<b>Citation</b>	<b>Type of Violation</b>	<b>Maximum Civil Monetary Penalty</b>
(a) African Elephant Conservation Act	16 U.S.C. 4224(b)	Any violation	\$10,832
(b) Bald and Golden Eagle Protection Act	16 U.S.C. 668(b)	Any violation	\$13,685
(c) Endangered Species Act of 1973	16 U.S.C. 1540(a)(1)	(1) Knowing violation of section 1538	\$54,157

		(2) Other knowing violation	\$25,995
		(3) Any other violation	\$1,368
(d) Lacey Act Amendments of 1981	16 U.S.C. 3373(a)	(1) Violations referred to in 16 U.S.C. 3373(a)(1)	\$27,371
		(2) Violations referred to in 16 U.S.C. 3373(a)(2)	\$684
(e) Marine Mammal Protection Act of 1972	16 U.S.C. 1375	Any violation	\$27,371
(f) Recreational Hunting Safety Act of 1994	16 U.S.C. 5202(b)	(1) Violation involving use of force or violence or threatened use of force or violence	\$17,416
		(2) Any other violation	\$8,708
(g) Rhinoceros and Tiger Conservation Act of 1998	16 U.S.C. 5305a(b)(2)	Any violation	\$19,053
(h) Wild Bird Conservation Act	16 U.S.C. 4912(a)(1)	(1) Violation of section 4910(a)(1), section 4910(a)(2), or any permit issued under section 4911	\$45,907
		(2) Violation of section 4910(a)(3)	\$22,034
		(3) Any other violation	\$919

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**Shannon A. Estenoz,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks,*

*Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.*